

**CITY OF UNION, KENTUCKY
ORDINANCE NO 2022-09**

**AN ORDINANCE OF THE CITY OF UNION, KENTUCKY IMPOSING REGULATIONS AND
FEES ON THOSE ENGAGED IN FRANCHISES, TRADES, OCCUPATIONS, PROFESSIONS
AND OTHER BUSINESSES IN THE CITY.**

WHEREAS, in order for the Union City Commission to comply with the provision requirements of KRS 67.750 to 67.790, certain revisions to existing ordinances of the City of Union in regard to the regulation and taxation of those engaged in franchises, trades, occupations, professions and other businesses in the City are necessary;

*NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE UNION CITY
COMMISSION* as follows:

Ordinance No. 2022-09 is hereby enacted and shall read in full as follows:

SECTIONS:

1	Definitions
2	Business License Required
3	Occupational Tax Payment Required
4	Employers to Withhold
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**SECTION 1
DEFINITIONS**

As used in this ordinance, the following terms and their derivatives shall have the following meanings unless the context clearly indicates that a different meaning is intended:

- (1) “Business entity” means each separate corporation, limited liability company, business development corporation, partnership, limited partnership, registered limited liability partnership, sole proprietorship, association, joint stock company, receivership, trust, professional service organization, or other legal entity through which business is conducted;
- (2) “Business” means any enterprise, activity, trade, occupation, profession or undertaking of any nature conducted for gain or profit. “Business” shall not include the usual activities of board of trade, chambers of commerce, trade associations, or unions, or other associations performing services usually performed by trade associations or unions. “Business” shall not include funds, foundations, corporations, or associations organized and operated for the exclusive and sole purpose of religious, charitable, scientific, literary, educational, civic or fraternal purposes, where no part of the earnings, incomes or receipts of such unit, group, or association, inures to the benefit of any private shareholder or other person.

- (3) "Business License" mean a license required by the City of Union, pursuant to the police power thereof, for the purpose of regulating business activities and operations within the City of Union.
- (4) "City" means the city of Union, Boone County, Kentucky.
- (5) "City Administrative Officer" (CAO) is defined as the City of Union top, non-political, executive who manages the City's day-to-day operations
- (6) "City Clerk" is defined as the position of Clerk of the City of Union, KY.
- (7) "Compensation" means wages, salaries, commissions, or any other form of remuneration paid or payable by an employer for services performed by an employee, which are required to be reported for federal income tax purposes and adjusted as follows:
 - (a) Include any amounts contributed by an employee to any retirement, profit sharing, or deferred compensation plan, which are deferred for federal income tax purposes under a salary reduction agreement or similar arrangement, including but not limited to salary reduction arrangements under Section 401(a), 401(k), 402(e), 403(a), 403(b), 408, 414(h), or 457 of the Internal Revenue Code; and
 - (b) Include any amounts contributed by an employee to any welfare benefit, fringe benefit, or other benefit plan made by salary reduction or other payment method which permits employees to elect to reduce federal taxable compensation under the Internal Revenue Code, including but not limited to Sections 125 and 132 of the Internal Revenue Code;
- (8) "Conclusion of the federal audit" means the date that the adjustments made by the Internal Revenue Service to net income as reported on the business entity's federal income tax return become final and unappealable;
- (9) "Final determination of the federal audit" means the revenue agent's report or other documents reflecting the final and unappealable adjustments made by the Internal Revenue Service.
- (10) "Fiscal year" means an accounting period of 12 months ending on the last day of any month other than December;
- (11) "Employee" means any person who renders services to another person or any business entity for compensation, including an officer of a corporation and any officer, employee, or elected official of the United States, a state, or any political subdivision of a state, or any agency of instrumentality of any one (1) or more of the above. A person classified as an independent contractor under the Internal Revenue Code shall not be considered an employee.
- (12) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that:
 - (a) if the person for whom the individual performs or performed the services does

- (a) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term “employer” means the person having control of the payment of such wages.
- (13) “Gross Receipts” shall refer to the total amount of considerations received in exchange for property or services sold, leased or rented during a given period before deducting costs or expenses. In general, gross receipts of a business shall encompass all business activities that generate income.
- (14) “Internal Revenue Code” means the Internal Revenue Code in effect on December 31, 2003, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2004, that would otherwise terminate;
- (15) “Payroll” means the Gross Compensation earned by an employee for labor, work or services provided in the City on behalf of any entity doing business in the city.
- (16) “Person” shall mean every natural person, whether a resident or non-resident of the city. Whenever the word “person” is used in a clause prescribing and imposing a penalty in the nature of a fine or imprisonment, the word, as applied to a partnership or other form of unincorporated enterprise, shall mean the partners or members thereof, and as applied to corporations, shall mean the officers and directors thereof;
- (17) “Return” or “Report” means any properly completed and, if required, signed form, statement, certification, declaration, or any other document permitted or required to be submitted or filed with the city;
- (18) “Sales Revenue” means receipts from the sale, lease, or rental of goods, services, or property;
- (19) “Tax district” means the city, county, urban-county, charter county, consolidated local government, school district, special taxing district, or any other statutorily created entity with the authority to levy gross compensation, payroll, occupation tax or Business License fees;
- (20) “Taxable year” means the calendar year or fiscal year ending during the calendar year.

SECTION 2

BUSINESS LICENSE REQUIRED

- (1) Every person and business entity engaged in any business in the city of Union, Kentucky shall be required to apply for and obtain a Business License from the city of Union before the commencement of business or in the event of a change of business status each calendar year.

Licensees are required to notify the city of any changes in address, the cessation of business, or any other changes which render the information supplied to the city in the license application inaccurate.

- (a) Business License fee leveed and imposed by this ordinance shall be \$50.

- (2) License applications will be obtainable at the City Building online on the city's website. Information collected on the form shall include, but is not limited to: business name, address, contact number, tax identification number, name of the ownership and contact information for the authorized representative who is responsible for the operating and managing the business in the city, emergency contacts, a brief description of the business, date of on which the business will begin and any and all information the City determines is appropriate to collect.
- (3) The giving of false or intentionally misleading information on the application shall be grounds for denial of the license applied for or, if a license has been granted, revocation thereof upon discovery.
- (4) All applications for licenses hereunder shall be subject to review by the CAO who shall endorse his/her decision for approval or denial. The CAO may refer an application to any other official, employee, or department of the city or cooperating authority, such as the Boone County Sheriff's Office, as he deems appropriate for review. The CAO may require such additional information from the applicant as deemed reasonable in order to make a decision on the application.
 - (a) After review, the CAO may approve, approve conditionally, or deny the license. If denied, the CAO must provide a written explanation of the grounds of denial. The applicant has the right to appeal to the city Commission, in writing submitted to the City, within 30 days of the denial.
 - (b) If interested in challenging the denial, written statements shall include the grounds upon which to avoid such decision. The City Commission may consider the appeal at the next regular monthly Commission meeting but must be received 5 business days prior to. The order of the City Commission on the appeal shall be final.
 - (c) Revoked Business Licenses may result in barring the previous license holder for a period of up to two (2) years as determined by the Union City Commission.
- (5) All Business Licenses expire on December 31st of that calendar year.
- (6) Business Licenses may be purchased for the next calendar year starting in November of the preceding year.
- (7) All vetting guidelines provided in subsection 2.4 shall not be needed for renewal of a license unless there is a material change in the ownership, location, or type of business being conducted.

SECTION 3

OCCUPATIONAL TAX PAYMENT REQUIRED

- (1) Except as provided in subsection (2) of this section, every person or business entity engaged in any business for profit and any person or business entity that is required to make a filing with the Internal Revenue Service or the Kentucky Revenue Cabinet shall be required to file and pay to the city an occupational tax for the privilege of engaging in such activities within the city. The occupational tax shall be measured by:

- (a) **2%** all wages and compensation paid or payable in the city for work done or services performed or rendered in the city by every resident and nonresident who is an employee;
 - (b) **0%** of the gross receipts from business conducted in the city by a resident or nonresident business entity.
- (2) The occupational tax imposed in this section shall not apply to the following persons or business entities:
 - (a) Any compensation received by members of the Kentucky national guard for active duty training, unit training assemblies and annual field training;
 - (b) Any compensation received by precinct workers for election training or work at election booths in state, county, and local primary, regular, or special elections.
- (3) When compensation is paid or payable for work done or services performed or rendered by an employee, both within and without the city, the tax shall be measured by that part of the compensation paid or payable as a result of work done or service performed or rendered within the city. Payroll due shall only consider compensation for work performed or services rendered within the city. For the city to verify the accuracy of a taxpayer's reported percentages under this subsection, the taxpayer shall maintain adequate records. Such records will be made available by request of the city shall it be deemed necessary.
- (4) The maximum annual gross earnings subject to section 3.1 of this ordinance shall be set at the current Federal Insurance Contributions Act (FICA) rate per calendar year.

SECTION 4

EMPLOYERS TO WITHHOLD

- (1) Every employer making payment of compensation to an employee shall deduct and withhold from the compensation an occupational tax levied under Section (3) of this ordinance.
- (2) Every employer required to deduct and withhold tax under this section shall, for the quarter ending after January 1 and for each quarter ending thereafter, on or before the end of the month following the close of each quarter, make a return and report to the city, and pay to the city, the tax required to be withheld under this section, unless the employer is permitted or required to report within a reasonable time after some other period as determined by the city.
- (3) Every employer who fails to withhold or pay to the city any sums required by this ordinance to be withheld and paid shall be personally and individually liable to the city for any sum or sums withheld or required to be withheld in accordance with the provisions of this section.
- (4) The city shall have a lien upon all the property of any employer who fails to withhold or pay over to the city sums required to be withheld under this section. If the employer withholds, but fails to pay the amounts withheld to the city, the lien shall commence as of the date the amounts withheld were required to be paid to the city. If the employer fails to withhold, the lien shall commence at the time the liability of the employer is assessed by the city.
- (5) Every employer required to deduct and withhold tax under this section shall annually on or before February 28 of each year complete and file on a form furnished or approved by the city a reconciliation of the occupational tax withheld where compensation is paid or payable to employees. Either copies of federal forms W-2 and W-3, transmittal of wage and tax

statements, or (preferred) a detailed employee listing with the required equivalent information, as determined by the city, shall be submitted.

- (6) Every employer shall furnish each employee a statement on or before January 31 of each year showing the amount of compensation and occupational tax deducted by the employer from the compensation paid to the employee for payment to the city during the preceding calendar year.
- (7) The president, vice president, secretary, treasurer or any other person holding an equivalent corporate office of any business entity subject to this section shall be personally and individually liable, both jointly and severally, for any tax required to be withheld from compensation paid or payable to one or more employees of the business entity, and neither the corporate dissolution or withdrawal of the business entity from the city, nor the cessation of holding any corporate office, shall discharge that liability; provided that the personal and individual liability shall apply to each and every person holding the corporate office at the time the tax becomes or became obligated. No person shall be personally and individually liable under this subsection unless such person had authority to collect, truthfully account for, or pay over the tax imposed by this ordinance at the time that the taxes imposed by this ordinance become or became due.
- (8) Notwithstanding subsections (1) and (7) of this section, every employee receiving compensation in the city subject to the tax imposed under Section (3) of this ordinance shall be personally liable for any amount due. In all cases where the employer does not withhold the tax levied under this ordinance from the employee, such employee or employees shall be responsible for filing with the city each quarter in the same manner as if they were the employer.
- (9) Every business entity subject to an occupational tax governed by the provisions of this ordinance shall keep records, render under oath statements, make returns, and comply with rules as the city from time to time may prescribe. Whenever the city deems it necessary, the city may require a business entity, by notice served to the business entity, to make a return, render statements under oath, or keep records, as the city deems sufficient to determine the tax liability the business entity.

SECTION 5

REFUNDS

- (1) Where there has been an overpayment of tax under Section (4) of this ordinance, a refund or credit shall be made to the employer to the extent of overpayment only if a written application for refund or credit is received by the city from the employer within two (2) years from the date the overpayment was made.
- (2) An employee who has compensation attributable to activities performed outside the city, based on time spent outside the city, whose employer has withheld and remitted to this city, the occupational tax on the compensation attributable to activities performed outside the city, may file for a refund within two (2) years of the date prescribed by law for the filing of a return. The employee shall provide a schedule and computation sufficient to verify the refund claim and the city may confirm with the employer the percentage of time spent outside the city and the amount of compensation attributable to activities performed outside the city prior to approval of the refund.

SECTION 6
ADMINISTRATIVE PROVISIONS

- (1) No suit shall be maintained in any court to restrain or delay the collection or payment of the tax levied by this ordinance.
- (2) The authority to refund or credit overpayments of taxes collected pursuant to this ordinance is vested exclusively in the city.

SECTION 7
INFORMATION TO REMAIN CONFIDENTIAL

- (1) No present or former employee of any tax district shall intentionally and without authorization inspect or divulge any information acquired by him or her of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the tax district or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns for taxation, or any other infraction of the tax laws, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or the taxpayer's properly authorized agent with information respecting his or her own return. Further, this prohibition does not preclude any employee of the tax district from testifying in any court, or from introducing as evidence returns or reports filed with the tax district, in an action for violation of a tax district tax law or in any action challenging a tax district tax laws.
- (2) The city reserves the right to disclose to the Commissioner of Revenue of the Commonwealth of Kentucky or his or her duly authorized agent all such information and rights to inspect any of the books and records of the city if the Commissioner of Revenue of the Commonwealth of Kentucky grants to the city the reciprocal right to obtain information from the files and records of the Kentucky Department of Revenue and maintains the privileged character of the information so furnished. Provided, further, that the city may publish statistics based on such information in such a manner as not to reveal data respecting net profits or compensation of any person or business entity.
- (3) In addition, the city is empowered to execute similar reciprocity agreements as described in subsection (2) of this section with any other taxing entity, should there be a need for exchange of information in order to effect diligent enforcement of this ordinance.

SECTION 8
PENALTIES

- (1) Every employer who fails to file a return or pay the tax on or before the time prescribed under Section (4) of this ordinance may be subject to a penalty in amount equal to five percent (5%) of the tax due for each calendar month. The total penalty levied pursuant to this subsection shall not exceed twenty-five percent (25%) of the total tax due; however, the penalty shall not be less than twenty-five dollars (\$25). A fraction of a month is counted as an entire month.
- (2) Every tax imposed by this ordinance, and all increases, interest, and penalties thereon, shall become, from the time the tax is due and payable, a personal debt of the business to the city.

- (3) The city may enforce the business license requirement and the collection of the occupational tax due under previous section of this ordinance and any fees, penalties, and interest of this section by civil action in a court of appropriate jurisdiction. To the extent authorized by law, the city shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this ordinance.
- (4) In addition to the penalties prescribed in this section, any business entity or employer who willfully fails to pay taxes owing or collected, with the intent to evade payment of the tax or amount collected, or any part thereof, shall be guilty of a Class A misdemeanor.
- (5) Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with, any matter arising under this ordinance of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, or document, shall be guilty of a Class A misdemeanor.
- (6) Any person violating the provisions of section (7) of this ordinance by intentionally inspecting confidential taxpayer information without authorization, shall be fined not more than five hundred dollars (\$500) or imprisoned for not longer than six (6) months, or both.
- (7) Any person violating the provisions of section (7) of this ordinance by divulging confidential taxpayer information shall be fined not more than one thousand (\$1000) or imprisoned for not more than one (1) year, or both.

SECTION 9 USE OF OCCUPATIONAL TAX AND BUSINESS LICENSE FEE

All money derived from the taxes and fees under the provisions of this ordinance shall be paid to the city and placed to the credit of the city's general revenue fund.

SECTION 10 PROVISIONS SEVERABLE

The provisions of this ordinance are severable; and the invalidity of any provision of this ordinance shall not affect the validity of any other provision thereof; and other such provisions shall remain in full force and effect if they remain valid in the absence of those provisions determined to be invalid.

SECTION 11 EFFECTIVE DATE

This ordinance shall be effective at midnight on January 1, 2023, after the enactment and publication thereof, according to law.

**SECTION 12
PUBLICATION**


This ordinance shall be published in summary pursuant to K.R.S 83A.060 (9).

FIRST READING: April 18th, 2022

SECOND READING: May 2, 2022

Published: _____

APPROVE



HON. LARRY K. SOLOMON, MAYOR

ATTEST:



TAMMY WILHOITE, CITY CLERK